

So Ordered.



Frederick P. Corbit

Frederick P. Corbit
Bankruptcy Judge

Dated: January 23rd, 2014

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

LLS AMERICA, LLC,

Debtor.

BRUCE P. KRIEGMAN, solely in his
capacity as court-appointed Chapter 11
Trustee for LLS America, LLC,

Plaintiff,

vs.

DAVID AND LISA WARES,

Defendants.

DC Case No. CV-12-437-RMP

Case No. 09-06194-FPC11

Adversary No. 11-80163-FPC11

REPORT AND RECOMMENDATION
RE: AMENDED ORDER GRANTING
MOTION FOR PARTIAL SUMMARY
JUDGMENT

The Honorable Frederick P. Corbit, sitting in the United States Bankruptcy Court for the Eastern District of Washington, hereby files this Report and Recommendation regarding the plaintiff's Motion for Partial Summary Judgment (ECF No. 36) filed with the bankruptcy court in this adversary proceeding.

This Report and Recommendation is made pursuant to the Honorable Rosanna Malouf Peterson's Order Withdrawing the Reference and Referring Back to

1 Bankruptcy Court for Further Proceedings (ECF No. 2) entered on July 10, 2012 in
2 District Court Case No. CV-12-437-RMP.

3 On July 25, 2013, the plaintiff filed and served a Motion for Partial Summary
4 Judgment (ECF No. 36) directed at fixing amounts the defendants invested in the
5 debtor and the amounts the defendants received from the debtor. The defendants failed
6 to respond to the motion.

7 A hearing was held on the plaintiff's Motion for Partial Summary Judgment on
8 August 9, 2013 and the defendants failed to appear. The court granted the plaintiff's
9 motion and a copy of said amended order is attached to this Report and
10 Recommendation.

11 **Recommendation**

12 The District Court should grant the plaintiff's Motion for Partial Summary
13 Judgment as the defendants failed to file any response to the motion or appear at the
14 scheduled hearing.

15 ///END OF REPORT AND RECOMMENDATION///
16
17
18
19
20

1
2 **So Ordered.**



3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
A handwritten signature in black ink, reading "Frederick P. Corbit".

Frederick P. Corbit
Bankruptcy Judge

Dated: January 22nd, 2014

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

LLS AMERICA, LLC, *et al.*,¹
Debtors.

BRUCE P. KRIEGMAN, solely in his
capacity as court-appointing Chapter 11
Trustee for LLS America, LLC,

Plaintiff,

v.

DAVID AND LISA WARES,
Defendants.

No. 09-06194-FPC11

Adversary No. 11-80163-FPC

AMENDED ORDER GRANTING
MOTION FOR PARTIAL SUMMARY
JUDGMENT

¹ Please refer to the Substantive Consolidation Order (Docket No. 771) for a listing of the consolidated debtor-entities.

AMENDED ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT- 1

{S0842812; 1 }



WITHERSPOON • KELLEY

Attorneys & Counselors

422 W. Riverside Avenue, Suite 1100 Phone: 509.624.5265
Spokane, Washington 99201-0300 Fax: 509.458.2728

1 Plaintiff sought partial summary judgment that: (1) Defendants made
2 investments in the Debtor's operations, totaling \$161,232.60, and (2) the Debtor,
3 in turn, paid to the Defendants \$171,473.47. (ECF 36.) On August 9, 2013,
4 Plaintiff appeared for a status conference on Plaintiff's Motion for Partial
5 Summary Judgment as required by LBR 7056-1(b). The Defendants did not
6 appear at the status conference, and did not file any opposition to the Plaintiff's
7 Motion for Partial Summary Judgment. Moreover, the Defendants did not file an
8 answer in this case, and have taken no other action.

12 At the August 9, 2013 status conference, the Court orally granted the
13 Plaintiff's Motion for Partial Summary Judgment. (ECF 43 & 44.)

15 On September 24, 2013, an Order Granting Motion for Partial Summary
16 Judgment was entered by the Court (the "Order"). (ECF 50.) The Order
17 inadvertently grants Plaintiff a judgment against Defendants instead of reflecting
18 the actual amount of transfers as requested in Plaintiff's Motion for Partial
19 Summary Judgment.

22 Based upon the foregoing and having reviewed the documents and
23 pleadings in support of the Motion for Partial Summary Judgment, and there being
24 no opposition to the Motion for Partial Summary Judgment, no appearance by the
25 Defendants at the status conference, and being duly advised in the premises,

28 AMENDED ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT- 2

{S0842812; 1 }



WITHERSPOON • KELLEY

Attorneys & Counselors

422 W. Riverside Avenue, Suite 1100 Phone: 509.624.5265
Spokane, Washington 99201-0300 Fax: 509.458.2728

1 IT IS HEREBY ORDERED that the Plaintiff's Motion for Partial Summary
2 Judgment is GRANTED;

3 IT IS FURTHER ORDERED that Defendants made investments in the
4 Debtor's operations, totaling \$161,232.60, and the Debtor in turn paid to the
5 Defendants \$171,473.47.
6

7 IT IS FURTHER ORDERED that the Plaintiff is entitled to Judgment
8 against the Defendant for an amount of no less than the Defendants' total net
9 profits (or "MIMO") in the amount of \$10,240.87, representing the difference
10 between the Defendants' receipt of \$171,473.47 in payments from the Debtor and
11 investments by the Defendants in the Debtor's operations of \$161,232.60, plus
12 post-judgment interest at the applicable federal rate. The Plaintiff reserves the
13 right to obtain Judgment for the total amount of payments received by the
14 Defendants (i.e., \$171,473.37) subject to a trial on the issue of whether the
15 Defendant invested in good faith.
16
17
18
19

20 /// End of Order ///

21 Presented by:

22 WITHERSPOON • KELLEY

23 /s/ Shelley N. Ripley
24 Matthew A. Mensik, WSBA No. 44206
25 Shelley N. Ripley, WSBA No. 28901
26 Attorneys for Plaintiff
27
28

AMENDED ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT- 3

{S0842812; 1 }



WITHERSPOON • KELLEY

Attorneys & Counselors

422 W. Riverside Avenue, Suite 1100 Phone: 509.624.5265
Spokane, Washington 99201-0300 Fax: 509.458.2728